

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



March 25, 1988

ALL COUNTY LETTER NO. 88-33

TO ALL COUNTY WELFARE DIRECTORS

SUBJECT: RUTAN COURT ORDER AND IMPLEMENTATION METHODOLOGY

REFERENCES: ALL COUNTY LETTER NO. 86-45, 86-55, 86-84, 86-90, 86-117, 86-129 AND  
ALL COUNTY WELFARE DIRECTOR MEDS TRANSMITTAL OF JUNE 10, 1986

On February 19, 1988, Judge Michael E. Sallachey of the Superior Court for the County of Alameda signed the final order for the retroactive portion of the Rutan v. McMahon Court Case (see attached court order). The retroactive period covered by the court case is June 1, 1983 to July 31, 1986. Rutan class members were applicants for, or recipients of, AFDC during the retroactive period when they received a lump sum and spent all or part of the lump sum before receiving an adequate and timely written explanation of the lump sum rule.

Implementation is scheduled for August 1, 1988. An ACL with implementing instructions and materials will be sent out to the counties by July 1, 1988.

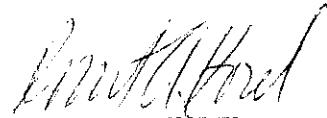
Notification of potential class members will be by two different methods. The method used will be determined by an individual county's ability to identify potential class members. In 40 counties referred to as "Mailing Counties," the potential class members will be identified by either manually searching existing computer listings or statistical reports, or by a specific computer generated report. The mailing counties will mail an Intent to Claim Form to identified class members on August 1, 1988. All mailing counties are instructed to compile a mailing list of all potential Rutan class members if they have not already done so. This mailing list may contain an overinclusive class of individuals, e.g., members of families who became ineligible due to the receipt of excess income. The mailing list once established must be updated with the most current addresses available before mailing to potential class members.

The "Mailing Counties" are: Alameda, Alpine, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Kern, Madera, Marin, Mendocino, Merced, Modoc, Mono, Monterey, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tehama, Tulare, Ventura, Yolo, and Yuba.

The other 18 counties referred to as "Face to Face Counties," for the period of one year will identify potential class members at the time of application if the applicant had been on aid previously at any time during the retroactive period and by screening open caseloads at the time of annual redetermination for recipients who underwent a lump sum period of ineligibility.

The "Face to Face Counties" are: Butte, Colusa, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Los Angeles, Mariposa, Napa, San Benito, Shasta, Sierra, Siskiyou, Sutter, Trinity, Tuolumne.

If you have any questions about the Rutan Court Case, please call Mr. Vincent Toolan at (916) 324-2007.



ROBERT A. HOREL  
Deputy Director

Attachment

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9  
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 MARCI RUTAN, ESTANISLAO SANDOVAL, )  
SANDRA TATE, )

13 Plaintiffs, )

14 v. )

15 LINDA McMAHON, Director of the )  
16 California Department of Social )  
Services; DEPARTMENT OF SOCIAL )  
17 SERVICES; JESSE R. HUFF, Director )  
of the Department of Finance; )  
18 DEPARTMENT OF FINANCE, )

19 Defendants. )  
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ENDORSED  
FILED

FEB 19 1988

RENE C. DAVIDSON, County Clerk  
By DELAINE WILLIAMS, Deputy

NO. 612542-4

CLASS ACTION

CONSENT DECREE

DATE: October 6, 1987

TIME: 2:00 p.m.

DEPT: No. 1

# TABLE OF CONTENTS

	<u>Page</u>
I. CLASS CERTIFICATION . . . . .	1
II. BINDING EFFECT OF CONSENT DECREE . . . . .	2
III. PROSPECTIVE RELIEF . . . . .	2
A. <u>Prior Notice of the Lump Sum Rule</u> . . . . .	2
B. <u>Modification of the Notice</u> . . . . .	2
C. <u>Effect of Failure to Provide Notice</u> . . . . .	3
D. <u>Recoupment of overpayments</u> . . . . .	3
IV. RETROACTIVE BENEFITS . . . . .	3
A. <u>Determination of Amount</u> . . . . .	3
B. <u>Identification and Notice to Class Members</u> . . . . .	4
1. <u>Notice of Right To Claim Retroactive Benefits</u> . . . . .	4
2. <u>Identification of Class Members</u> . . . . .	5
(a) "Mailing counties" . . . . .	5
(b) "Face to face counties" . . . . .	6
(c) <u>Posters</u> . . . . .	6
C. <u>Claim Process</u> . . . . .	7
1. <u>Return of Intent to Claim Forms</u> . . . . .	7
2. <u>Providing Claim Forms</u> . . . . .	8
3. <u>Form of Claim Forms</u> . . . . .	8
4. <u>Return of Claim Forms</u> . . . . .	9
(a) Timeliness . . . . .	9
(b) Incomplete claim forms . . . . .	10
5. <u>Responsible county</u> . . . . .	10
D. <u>PAYMENT OF CLAIMS</u> . . . . .	10

TABLE OF CONTENTS (continued)

	<u>Page</u>
1. <u>Deadlines for Processing Claim Forms</u> . . . . .	11
2. <u>Treatment of Payments</u> . . . . .	11
3. <u>Offset of Previous Overpayments</u> . . . . .	11
V. IMPLEMENTATION OF CONSENT DECREE . . . . .	11
A. <u>Promulgation of Regulations</u> . . . . .	11
B. <u>Review and Approval of Forms, Notices, and</u> <u>Regulations</u> . . . . .	12
C. <u>Preservation of Case Files</u> . . . . .	12
VI. REPORTING . . . . .	12
A. <u>"Mailing Counties"</u> . . . . .	12
B. <u>"Face to Face Counties"</u> . . . . .	13
VII. DISPOSITION OF REMAINING CLAIMS . . . . .	14
VIII. CLAIMS OF NAMED PLAINTIFFS . . . . .	14
IX. ATTORNEYS FEES AND COSTS . . . . .	15
X. CONTINUING JURISDICTION . . . . .	15

1 In this class action, plaintiffs seek prospective and  
2 retroactive relief arising from defendants' failure to give a  
3 written explanation of the lump sum rule, EAS §44-207.4 to  
4 recipients of Aid to Families with Dependent Children ("AFDC")  
5 prior to the time that they receive lump sum income. On August  
6 20, 1986, this court entered a preliminary injunction which,  
7 inter alia, enjoined defendants McMahon and Department of Social  
8 Services ("DSS") from applying the lump sum rule to any recipient  
9 of AFDC who had not received prior notice, in a specified form, of  
10 the terms of the rule.

11 The parties wish to settle this action without the necessity  
12 of further litigation. They hereby enter into the following  
13 consent decree:

14 I. CLASS CERTIFICATION

15 For purposes of this Consent Decree, a class shall be  
16 certified, defined as follows:

17 All persons residing in California who, at any time on or  
18 after June 1, 1983, (a) received AFDC benefits; (b) received lump  
19 sum income while they were receiving AFDC; (c) did not receive an  
20 adequate written explanation of the lump sum rule before they  
21 received the lump sum payment; and (d) spent all or part of the  
22 lump sum payment before receiving such a written explanation of  
23 the lump sum rule, or an adequate notice of action explaining the  
24 consequences of receiving lump sum income. For purposes of this  
25 Consent Decree, an "adequate written explanation" contains that  
26 information set forth in the notice attached to the preliminary  
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1 injunction herein as Exhibit A.

2 II. BINDING EFFECT OF CONSENT DECREE

3 This consent decree shall be binding upon defendant DSS, upon  
4 defendant McMahon and her successors in interest, upon defendants'  
5 agents the county welfare departments, and upon all those acting  
6 in concert with them or any of them.

7 III. PROSPECTIVE RELIEF

8 A. Prior Notice of the Lump Sum Rule

9 Defendants McMahon and Department of Social Services  
10 (hereinafter "defendants") shall continue to provide a written  
11 explanation of the terms of the lump sum rule to all applicants  
12 for AFDC benefits, and to all recipients at the time of the annual  
13 redetermination. The notice must be a separate document, and must  
14 contain the information set forth in the notice attached to the  
15 preliminary injunction herein as Exhibit A. Counties will be  
16 required to orally advise applicants and recipients of the  
17 importance of the notice at the time it is given, and shall  
18 document that the notice was given in the case file.

19 B. Modification of the Notice

20 Defendants may change the format or wording of the notice in  
21 a manner consistent with the previous paragraph. For a period of  
22 three years after the signing and approval of this consent decree,  
23 prior to finalizing any such modifications, they shall give  
24 plaintiffs' counsel no less than fifteen working days notice. If  
25 plaintiffs' counsel objects to the modification, they may seek  
26 relief from the court upon five days notice to defendants. In

1 that event, defendants shall not finalize the modification pending  
2 judicial review. In the event that defendants modify the form or  
3 content of the notice at the expiration of the three year period  
4 referred to above, plaintiffs or any member of the class may seek  
5 judicial relief if they believe that such modification is not in  
6 accordance with law.

7 C. Effect of Failure to Provide Notice

8 Defendants and their agents, the county welfare departments,  
9 shall not apply the lump sum rule to any AFDC recipient who  
10 received and spent lump sum income as defined in EAS §44-207.4  
11 prior to receiving the notice described in paragraph III(A),  
12 above. There shall be a presumption that the notice was not given  
13 if receipt of the notice is not documented in the case file, as  
14 required under paragraph III(A). The foregoing presumption shall  
15 apply to each person who applied for AFDC benefits or who went  
16 through an annual redetermination at any time following  
17 promulgation of regulations implementing this Consent Decree.

18 D. Recoupment of overpayments

19 Defendants shall not recoup or attempt to recoup any  
20 overpayment of AFDC benefits received as a result of the  
21 application of the lump sum rule unless the recipient received an  
22 adequate written explanation of the lump sum rule prior to receipt  
23 of lump sum income. The presumption set forth in subparagraph  
24 (C), above shall apply in like manner for purposes of this  
25 paragraph.

26 IV. RETROACTIVE BENEFITS

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1 they were subject to collection action as a result of overpayments  
2 arising from lump sum income. The notice (hereinafter referred to  
3 as an "intent to claim notice"), will be in English and Spanish.  
4 In addition, the notice will contain a "bullet" in Vietnamese,  
5 Laotian, Chinese and Cambodian, advising in substance: "The  
6 county may owe you money. You may contact your worker for a  
7 translation of this notice."

8 The notice will prominently advise claimants to fill in their  
9 current address and their telephone number, if any. In addition,  
10 claimants will be asked what county they were living in when they  
11 received the lump sum payment. Claimants will be advised to  
12 return the notice to their local county welfare department if they  
13 wish to claim reimbursement.

14 2. Identification of Class Members

15 (a) "Mailing counties"

16 Those counties which can identify some or all members of the  
17 class without the necessity of reviewing case files shall mail the  
18 notice described in the previous paragraph to all such persons at  
19 the most current address maintained by the county. In the case of  
20 class members who are no longer on aid, the county shall review  
21 MEDS and food stamp records in order to determine the most recent  
22 address available if the notice is returned as undeliverable.  
23 This method shall be used to notify class members who were subject  
24 to recoupment of overpayments prior to entry of the preliminary  
25 injunction herein, as well as to all other members of the class.

26 These counties shall begin to identify the name and current  
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1 address of class members promptly upon approval of this Consent  
2 Decree, and shall mail the notices described herein within forty-  
3 five (45) days after DSS issues regulations implementing this  
4 Decree.

5 The method of notification described in this paragraph may be  
6 used by counties which are unable to identify class members  
7 without a review of case files, at their option. Such counties  
8 may mail the notice to any classification of former and current  
9 AFDC recipients which is calculated to include the members of the  
10 class, as defined in paragraph I, above.

11 (b) "Face to face counties"

12 For one year following implementation of this consent decree,  
13 counties which cannot identify all class members without the  
14 necessity of reviewing case files (other than those counties which  
15 elect to mail notices as set forth above) shall provide the intent  
16 to claim notice to all recipients of AFDC benefits at the time of  
17 the annual redetermination, and to all applicants for AFDC  
18 benefits who had previously received such benefits at any time  
19 after June 1, 1983. Said counties shall document in the case file  
20 that the notice was given.

21 (c) Posters

22 Defendants shall develop posters in English and Spanish to  
23 notify class members of their right to benefits. Said posters  
24 shall in addition contain the "bullet" in the four languages  
25 described in subparagraph (B)(1), above. The posters shall be  
26 submitted to plaintiffs' attorneys for review of layout, and, once  
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1 produced, shall be placed in prominent locations in all county  
2 welfare departments and food stamp outlets. DSS shall further  
3 request that the posters be displayed in EDD offices and Social  
4 Security offices throughout California for a period of one year  
5 following issuance of regulations implementing this Consent  
6 Decree. Additionally, DSS shall send a copy of the poster in both  
7 English and Spanish to all Legal Services offices throughout  
8 California, in accordance with a list furnished by plaintiffs'  
9 counsel. All county welfare departments shall maintain copies of  
10 the informing notice and claim forms, and shall provide each form  
11 to any person upon request.

12 C. Claim Process

13 1. Return of Intent to Claim Forms

14 Intent to claim forms must be returned to the county welfare  
15 department within thirty (30) days after receipt. The county  
16 shall allow an additional thirty (30) days to return the form in  
17 the event that the claimant had good cause for failure to return  
18 it within the initial thirty day period. In the event that the  
19 county determines that the form was not returned in a timely  
20 manner, it shall send a notice of action to the claimant, advising  
21 of its determination and of the claimant's right to request a  
22 hearing. For purposes of this paragraph, the date of the  
23 postmark, or the date of the county stamp if the form was hand  
24 delivered, shall be considered the date on which the form was  
25 returned.

26 The county shall retain all intent to claim forms until the  
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1 claim period established pursuant to this consent decree has  
2 closed. In each case in which a claim is subsequently filed, the  
3 county shall maintain the intent to claim form together with the  
4 claim form itself and all other documents pertaining to the claim.

## 5 2. Providing Claim Forms

6 Within thirty calendar days after receiving a timely notice  
7 of intent to claim, the county welfare department shall provide a  
8 claim form to the person requesting it. "Face to face" counties  
9 may provide the claim form in person, at the time that the  
10 informing notice is given. Counties are not required to provide a  
11 claim form to persons who may be conclusively determined, from the  
12 county's case records, not to be a member of the class, as  
13 described in this Consent Decree. In that event, however, the  
14 county shall send a notice of action describing its determination  
15 and the claimant's right to request a hearing.

## 16 3. Form of Claim Forms

17 (a) Claim forms shall be available in English, Spanish,  
18 and in the four languages described in paragraph IV(B)(1), above.  
19 The claim form shall prominently include the name and telephone  
20 number of an employee of the county welfare department who will be  
21 available to answer questions and provide assistance in completing  
22 the form. In no event shall such employees orally screen claim  
23 forms, or orally advise claimants that they are not eligible for  
24 retroactive benefits under this Consent Decree.

25 (b) Before providing the claim form to the claimant, the  
26 county shall retrieve from the case file and fill in the following  
27  
28

1 information: The date upon which the class member received lump  
2 sum income; the amount of income received; the date, if any, on  
3 which county sent the class member written notice of the terms of  
4 the lump sum rule; and the period of ineligibility, as originally  
5 determined.

6 (c) The claim form will request the class member to  
7 provide the following information: The amount of the lump sum  
8 payment which was spent before he/she received written notice of  
9 the lump sum rule; how the money was spent; the amount of income,  
10 if any, received in any month of the disqualification period, as  
11 originally determined; whether the claimant held non-exempt  
12 resources in excess of \$1000 during the disqualification period;  
13 the members of the household during the disqualification period;  
14 and the manner in which the family survived during the  
15 disqualification period. This information will be provided under  
16 penalty of perjury. The county may request available verification  
17 from the claimant, but if verification is not available, the claim  
18 will not be denied on that basis. The county may also request the  
19 claimant to sign a consent to release form so that it may seek  
20 verification from third parties.

#### 21 4. Return of Claim Forms

##### 22 (a) Timeliness

23 Claimants shall have sixty (60) days from receipt in which to  
24 return a claim form. The county shall allow an additional thirty  
25 (30) days to return the form in the event that the claimant had  
26 good cause for failure to return it within the initial sixty day

1 period. In the event that the county determines that the form was  
2 not returned in a timely manner, it shall send a notice of action  
3 to the claimant, advising of its determination and of the  
4 claimant's right to request a hearing. For purposes of this  
5 paragraph, the date of the postmark, or if none, the date on which  
6 the claimant signed the form or the date of the county stamp, if  
7 hand delivered, shall be considered the date on which the form was  
8 returned.

9 (b) Incomplete claim forms

10 If a claimant returns an incomplete claim form, the county  
11 will return the form to the claimant with a request for additional  
12 information. The claimant shall be permitted thirty (30) days in  
13 which to return the completed form. If the form is still  
14 incomplete at the end of that period, the county shall attempt a  
15 personal contact to assist in completing the form. An incomplete  
16 claim will be denied only if the amount of retroactive benefits  
17 due and owing cannot be determined using the information provided.

18 5. Responsible county

19 If the class member has moved from the county in which he/she  
20 resided at the time that the lump sum payment was received, that  
21 county will be responsible for determining the amount of  
22 retroactive benefits due, and for taking all actions required by  
23 this Consent Decree. The current county of residence will be  
24 required to transmit all forms and other correspondence received  
25 from the claimant to the responsible county within fifteen (15)  
26 working days.

1 D. PAYMENT OF CLAIMS

2 1. Deadlines for Processing Claim Forms

3 The county welfare departments shall have ninety (90) days  
4 from the date that a completed claim form is received in which to  
5 process, grant or deny, and pay a claim. In the event that the  
6 claim form is incomplete, the county welfare shall have one  
7 hundred and twenty (120) days in which to process the claim.  
8 Counties will be required to send notices of action explaining all  
9 determinations made in connection with a claim, and advising of  
10 the right to hearing if the claimant believes that the county is  
11 wrong.

12 2. Treatment of Payments

13 Any payments received by a class member pursuant to this  
14 Consent Decree will not be considered income in the month received  
15 or resources in the month received or the following  
16 month for purposes of eligibility for and calculation of benefits  
17 under the AFDC program. Further, the payments will be considered  
18 in determining food stamp eligibility only to the extent  
19 permitted under EAS §65-502(h). Recipients shall be informed of  
20 this in the notice of action granting the claim.

21 3. Offset of Previous Overpayments

22 Payments due and owing pursuant to this Consent Decree  
23 settlement agreement may be offset against outstanding  
24 overpayments only if the overpayment occurred three years or less  
25 prior to the date on which the Consent Decree is approved.

26 V. IMPLEMENTATION OF CONSENT DECREE

1       A. Promulgation of Regulations

2       Defendants shall issue emergency regulations implementing  
3 this Consent Decree with all due speed. Implementation shall, in  
4 any event, commence not later than six (6) months following  
5 approval of this Consent Decree.

6       B. Review and Approval of Forms, Notices, and Regulations

7       Defendants shall provide plaintiff's counsel with advance  
8 copies of all forms, notices, instructions, and regulations to be  
9 used in implementing this Consent Decree, no later than fifteen  
10 working days prior to finalizing such documents. In the event  
11 that plaintiff's counsel objects to any such document, the parties  
12 shall attempt to resolve their disagreement. If they are unable  
13 to do so, plaintiffs may seek further relief from the court upon  
14 five days notice to defendants. In that event, defendants shall  
15 not finalize the disputed document pending judicial review.

16       C. Preservation of Case Files

17       Defendants shall immediately instruct the county welfare  
18 departments not to destroy the case file of any person who is on  
19 may be a class member entitled to retroactive relief under the  
20 terms of this consent decree until all pending claims have been  
21 finally processed.

22                       VI. REPORTING

23       A. "Mailing Counties"

24       Defendants shall provide plaintiffs counsel with two reports  
25 concerning those counties described in paragraph IV(B)(2)(a),  
26 above. The first report shall be provided ninety (90) days after

1 DSS issues regulations implementing this Consent Decree, and shall  
2 state the number of notices mailed by each county. If the county  
3 mailed notices to an overinclusive class of persons, the class  
4 shall be described in the report. The second report shall be  
5 provided nine (9) months after DSS issues regulations implementing  
6 this Consent Decree, and shall state, for each county, the total  
7 number of intent to claim forms returned to the county; the number  
8 of claim forms provided to claimants; the number of claims  
9 received; the number of claims denied as untimely; the number of  
10 claims denied as incomplete; the number of claims denied because  
11 the claimant was not a member of the class; the number of claims  
12 denied because the claimant was not substantively eligible for  
13 retroactive benefits; and the number of claims granted in whole or  
14 in part. A claim which is paid in part shall not be considered a  
15 denial.

16 B. "Face to Face Counties"

17 Defendants shall provide plaintiffs' counsel with five  
18 reports concerning the counties described in paragraph  
19 IV(B)(2)(b), above. The first four reports shall be provided on a  
20 quarterly basis, commencing three months after defendants issue  
21 regulations implementing this Consent Decree. The first three  
22 quarterly reports shall state, for each month, the number of  
23 intent to claim notices provided by each county, the number of  
24 such forms returned to the county, and the number of claim forms  
25 distributed. The fourth quarterly report shall provide the  
26 information set forth in subparagraph (A) of this section, as well

1 as the number of claims received and pending. The fifth and final  
2 report shall be provided 1 1/2 years after implementation of this  
3 Consent Decree begins, and shall provide the information set forth  
4 in subparagraph (A).

#### 5 VII. DISPOSITION OF REMAINING CLAIMS

6 1. This consent decree does not adjudicate any claim which  
7 plaintiffs or any member of the class may have concerning the  
8 validity of EAS §44-207.42, insofar as that regulation applies the  
9 lump sum rule to anticipated income.

10 2. This consent decree does not adjudicate any claim which  
11 plaintiffs or any member of the class may have concerning DSS'  
12 practice of applying prior month budgeting to determine  
13 eligibility for benefits under the state-only AFDC-U program  
14 during the first two months of a lump sum disqualification period.

15 3. This consent decree does not adjudicate any claim which  
16 any person may have to reimbursement of retroactive benefits if  
17 (s)he received an overpayment which was recouped in whole or in  
18 part, and which was based upon unreported lump sum income received  
19 prior to an adequate written explanation of the lump sum rule. The  
20 rights of such persons under this Decree are set forth in  
21 paragraph III(D), above.

22 4. Insofar as they are raised in the First Amended Complaint  
23 herein, the claims described in the preceding paragraphs of this  
24 section are dismissed without prejudice.

#### 25 VIII. CLAIMS OF NAMED PLAINTIFFS

26 Defendants will set aside the hearing decisions of plaintiffs

1 Sandra Tate and Marci Rutan/Estanislao Sandoval, and will provide  
2 them benefits for which they are otherwise eligible pursuant to  
3 this Consent Decree.

4 IX. ATTORNEYS FEES AND COSTS

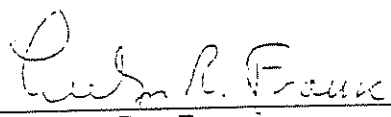
5 Defendants stipulate that plaintiffs are the prevailing party  
6 for purposes of awarding attorneys fees and costs. Defendants  
7 further stipulate that plaintiffs may claim costs as part of an  
8 attorneys fee award, without the necessity of filing a costs bill.

9 The parties will attempt to reach agreement on the amount of  
10 a reasonable attorneys fee award. If they are unable to do so,  
11 plaintiffs may seek a determination from the court as to the  
12 amount of such an award, upon properly noticed motion. The court  
13 may reserve jurisdiction to enter an award of attorneys fees and  
14 costs upon such motion.

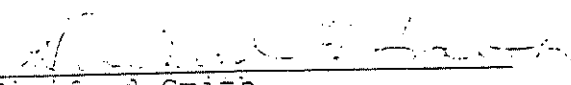
15 X. CONTINUING JURISDICTION

16 The court may retain jurisdiction to enforce any provision of  
17 this consent decree.

18 Dated: Feb. 15, 1988

  
Evelyn R. Frank  
Attorney for Plaintiffs

19  
20 Dated: Feb. 15, 1988

  
Winifred Smith  
Deputy Attorney General  
Attorney for Defendants